(1)

Supreme Court, U.S.
FILED

99 833 SEP 27 1999

No.

OFFICE OF THE CLERK

In The
Supreme Court of the United States

Patrick Dain,

Petitioner,

v.

COUNTY OF VENTURA,
and
RONALD KOMERS, AS AN INDIVIDUAL AND AS FORMER PERSONNEL DIRECTOR OF THE COUNTY OF VENTURA,
and
BARBARA JOURNET, AS AN INDIVIDUAL AND PERSONNEL DIRECTOR OF THE COUNTY OF VENTURA,
AND DOES 1-10, INCLUSIVE,

Respondents.

Petition for Writ of Certiorari to the
California Court of Appeal, Second Appellate District

PETITION FOR WRIT OF CERTIORARI

Patrick Dain
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Camarillo, (93010)
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2018

QUESTIONS PRESENTED FOR REVIEW

1. May the County of Ventura, as the recipient of federal funds, force Californians to belong to the Social Security System against their will?

2. May the County of Ventura circumvent International Treaties protecting religious freedoms in deciding what personal information is correct in regards to an individual?

3. May the County of Ventura compel a Californian who does not possess a social security number to violate their religious beliefs?

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This petition is Sui Generis in nature. It is an opportunity for the Court to establish guidelines for participation in the Social Security Numbering System within the states. It also affords the Court the opportunity for deciding whether or not a state or its political subdivisions may use false information by forcing its Citizens to participate in federal programs that are religiously repugnant to the Citizen. Further, this Petition affords the Court a platform to establish once and for all that the Social Security Welfare scheme is voluntary within the states.

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PETITION FOR WRIT OF CERTIORARI

PRAYER

TO THE HONORABLE CHIEF JUSTICE AND TO THE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES, MAY IT PLEASE THE COURT:

The Petitioner, Patrick Dain, respectfully prays that a writ of certiorari issue to review the judgement of the California Court of Appeal, Second Appellate District, which was entered on 29 April 1999.

OPINION BELOW

The Court of Appeal entered its decision affirming the Respondents' Motion for Judgement of dismissal on 29 April 1999. A copy of the unpublished ruling is attached as Appendix A.

The Court of Appeal denied Petitioner's Petition for rehearing on May 27, 1999. A copy is attached as Appendix B.

The California Supreme Court denied Petitioner's request for review on 14 July 1999. A copy is attached as Appendix C.

JURISDICTION

Given the State Supreme Court's refusal to review the Court of Appeal's affirmation of Respondent's Motion for Judgement of dismissal, the jurisdiction of this Court is invoked via the U.S. Constitution Article IV, Section 2 (Treaty and other Clauses) and the First, Ninth and Tenth Amendments.

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment One:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

United States Constitution, Article 3, Section 2.1.:

The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and Treaties made, or which shall be made, under their authority;-to all cases affecting ambassadors, other public ministers and consuls;-to

all cases of admiralty and maritime jurisdiction;-to controversies to which the United States shall be a party;-to controversies between two or more States;-between a State and citizens of another State;-between citizens of different States;-between Citizens of the same State claiming lands under grants from different States, and between a State, or the citizens thereof, and foreign States, citizens or subjects.

United States Constitution, Amendment Nine:

The enumeration of the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

United States Constitution, Amendment Ten:

The Powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

INTERNATIONAL TREATIES INVOLVED

UN Treaty of Universal Declaration of Human Rights of 10 December 1948:

Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self governing or under any other limitation of sovereignty.

Article 3

Everyone has the right to life, liberty and security of person.

Article 7

All are equaled before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection of the law. All are entitled to equal protection against any discrimination in violation of the Declaration and against any incitement to such discrimination.

Article 18

Everyone has the right to freedom of thought, conscience and religion; this right includes his right to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship, and observance.

Article 19

Everyone has the right to freedom of opinion and expression: this right includes freedom to hold opinions without inference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 20

2. No one may be compelled to belong to an association.

Article 30

Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any kind of the rights and freedoms set forth herein.

The Treaty of The American Convention on Human Rights, "Pact of San Jose, Costa Rica" of 22 Nov 69

Article 1: Obligation to respect rights. 1. The States Parties to this convention undertake to respect the rights and freedom recognized herein and to ensure to all persons subject to their jurisdiction the free and full exercise of those rights and freedoms, without any discrimination for reasons of race, color, sex, language, religion, political or other opinion, national or social origin, economic status, birth, or any other social condition.

Article 12. Freedom of Conscience of religion. 1. Everyone has the freedom of conscience and of religion. This right includes freedom to maintain or to change one's religion or beliefs, and freedom to profess or disseminate one's religion or beliefs, either individually or together with others, in public or in private. 2. No one shall be subject to restrictions that impair his freedom to maintain or to change his religion or beliefs.

Article 14. Right to reply. 1. Anyone injured by inaccurate or offensive statements or ideas disseminated to the public in general by a legally regulated medium of communication has the right to

reply or to make a correction using the same communications outlet, under such conditions as the law may establish.

Article 16. Freedom of Association. 1. Everyone has the right to associate freely for ideological, religious, political, economic, labor, social, cultural, sports, or other purposes.

Article 25. Right to judicial protection. Everyone has the right to simple and prompt recourse, or any other effective recourse, to a competent court or tribunal for protection against acts that violate his fundamental rights recognized by the constitution or laws of the state concerned or by this convention, even though such violation may have been committed by persons acting in the course of their official duties.

The UN Treaty of International Covenant on Economic, Social and Cultural Rights of 1976:

Part I

Article 1. All peoples have the right to self determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

Part II

Article 2.2. The states parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 5.1. Nothing in the present Covenant may be interpreted as implying for any State, group, or person has the right to engage in any activity or to perform any act aimed at the destruction of any of these rights or freedoms recognized herein,...

Judge Harry Pregerson, U.S. 9th Circuit Court of Appeals in San Francisco:

> "It has long been recognized that, where treaty provisions establish individual rights, these rights must be enforced by the Courts of the United States at the behest of the individual."

STATEMENT OF THE CASE

Sometime during the 1960's, Petitioner Patrick Dain's Mother obtained a social security number for him. As Petitioner grew older and studied the holy scriptures, he came to believe that social security numbers are the mark of the beast as spoken of in the Holy Bible. Petitioner has a string, sincere religious belief that social security numbers are the mark of the beast and he should not obtain, use, or be associated with one.

Petitioner Patrick Dain studied the law concerning the Social Security Act and learned that participation in Social Security is voluntary. Petitioner rescinded the Social Security Number his Mother wrongfully obtained for him by filing legal affidavit to that effect with the Los Angeles County Recorder's Office. Petitioner Patrick Dain requested the County of Ventura, where Petitioner works, to remove said number from its work records on religious grounds. Petitioner received an affidavit from his Mother which states that she applied for the number on his behalf based upon misinformation and deliberate misinformation by government officials. Petitioner does not have or use a Social Security Number. Petitioner advised the County of Ventura that the number contained in its records was not his, was obtained by his Mother, that the number conflicts with his strong sincere religious beliefs, and that the Social Security scheme is voluntary. Petitioner also told the County of Ventura that he waives and refuses to participate in any welfare benefit schemes.

The County of Ventura refused to remove Petitioner's Mother's Social Security Number from the work records that pertain to Petitioner. The County of Ventura cited its authority to keep and use the incorrect information (number) from *Bowen v. Roy,* (1986) 476 U.S. 693. The County of Ventura maintains that it may use any number it wishes in the interests of government convenience which it claims is a compelling government interest.

This Sui Generis litigation arose from the County of Ventura's refusal to amend its work records with correct information.

REASONS FOR GRANTING THE WRIT

1. The Social Security Welfare Scheme is Voluntary

We argue here that participation in the Social Security welfare scheme is voluntary. Therefore, one may or may not participate in the program and cannot be forced against his will. If one chooses to participate, he may apply for a Social Security Number. One may not apply if one has religious beliefs against such application and he cannot be forced to participate in any federal welfare scheme against his will.

The lower courts have interpreted *Bowen, supra,* broader than the precise facts to which it is applied.

2. Forced Participation or Association in a Federal Welfare Scheme Violates Religious Rights

The Court has ruled that participation in federal programs is voluntary in the states. *Printz and Mack v. United States,* 95-1478 and 95-1503 U.S.

Two of our most precious rights are those of freedom of religion and association. Religious rights and freedom of association are protected not only by the First Amendment but by the UN Treaty of Universal Declaration of Human Rights of 10 December 1948, The Treaty of The American Convention on Human Rights, "Pact of San Jose, Costa Rica" of 22 Nov 69, and The UN Treaty of International Covenant on Economic, Social and Cultural Rights of 1976. The appellate court was silent when these international treaty issues were raised.

Plaintiff has made his own covenant with God not to receive or be associated with the mark of the beast:

"No man can serve two masters: for either he will hate the one, and love the other, or else he will hold to the one, and despise the other. Ye cannot serve God and mammon." Matthew 6:24.

"...choose you this day whom ye will serve; whether the Gods which your fathers served that were on the other side of the flood, or the gods of the Amorites, in whose land ye dwell: but as for me and my house, we will serve the Lord." Joshua 24:15.

3. Californians Cannot be Compelled to Participate in Voluntary Federal Schemes

The right to participate or not to participate in federal welfare schemes rests with the people and is upheld by the ninth amendment. The Constitution does not empower the government to force the people into such a scheme. The Constitution does not delegate such powers to the United States or to the States. Therefore, the power to participate or not to participate is reserved to the people by the tenth amendment. A decision not to participate in a federal benefits scheme because of religious beliefs is guaranteed by the first amendment.

4. CONCLUSION

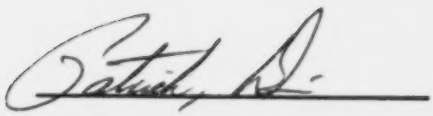
Given the foregoing, Petitioner respectfully requests that a writ of certiorari issue to review the judgement of the Second Appellate Court of Appeal of California.

VERIFICATION

Wherefore, I have read the foregoing Petition for Writ of Certiorari, with points and authorities and know the contents thereof, and that the same is true of my own knowledge, except as to those facts which are stated in information and belief, and as to those matters, I believe them to be true.

I declare or certify under penalty of perjury under the laws of California state that the forgoing is true and correct.

Dated this 12th day of November, 1999



Patrick Dain, Petitioner,
In Propria Persona
C/o 2410 G Las Posas Road
No. 102
Camarillo, (93010)
California

NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

PATRICK DAIN,

Plaintiff and Appellant,

v.

COUNTY OF VENTURA et al.,

Defendants and Respondents.

2d Civil No. B125700
(Super. Ct. No. 179954)
(Ventura County)

COURT OF APPEAL-
SECOND DIST.
FILED
APR 29 1999

JOSEPH A. LANE, Clerk
Deputy Clerk

Appellant Patrick Dain appeals from the judgement of dismissal entered after the trial court sustained a demurrer to his amended complaint without leave to amend. We affirm.

Facts and Procedural Background

According to appellant's amended complaint, in 1994 he became aware that his religious beliefs made him ineligible for social security and that assignment of a social security number to him was in error. In 1994, 1995, and 1996, he contacted various county officials, including the sheriff" department, the personnel director, the auditor" office, and the benefits coordinator, and

requested correction of all county records to remove his social security number because of his sincere religious belief that such numbers are the mark of the beast as outlined in the Book of Revelation of the Holy Bible. Appellant alleges that his request were refused. He also alleges that, in October of 1996, county counsel advised him that the county would not comply with his request. Finally, he alleged that in June of 1998, the Social Security Administration advised him that he was not eligible for social security benefits due to his religious beliefs.

Appellant's original complaint, which was filed in March of 1998, sought general and punitive damages against respondents County of Ventura and Ronald Komers (as personnel director) for defamation, denial of constitutional rights, "economic coercion," and "mental suffering." The trial court sustained respondents' demurrer to his complaint with leave to amend.

Thereafter, appellant filed a first amended complaint. His amended complaint added respondent Barbara Journet as a defendant (as personnel director) and sought general and punitive damages for three causes of action: (1) "trespass on religious rights" in violation of the California Constitution, article I, section 4, and Civil Code sections 1798.18, 1798.45, and 51; (2) "violation of liberty of conscience" under the California Constitution, article I, section 4; and (3) mental suffering.

Respondents demurred to the amended complaint, primarily arguing that the causes of action were nonexistent legal theories, and that the action was barred by appellant's failure to comply with the governmental tort claim filing requirements and the applicable statute of limitations. (Gov. Code, § 945.4; Code Civ. Proc., § 340.)

In opposition, appellant contended there was no legal requirement that a tort claim be filed for an alleged violation of a state constitutional right to religious free exercise, and that the statutes of limitation were inapplicable because respondents' bi-weekly use of his social security number constituted a continuing violation.

The trial court sustained the demurrer without leave to amend, reasoning that the complaint failed to state a constitutional violation, citing *Bowen v. Roy* (1986) 476 U.S. 693 [90 L.Ed.2d

735]; that the elements of a cause of action had not been alleged; and that the failure to comply with the tort claims filing requirements precluded the state claims in any event. Judgement in favor of respondents followed.

Discussion

On appeal from a judgement of dismissal entered after a demurrer has been sustained without leave to amend, we must affirm the judgement if it is correct on any theory. (*Hendy v. Losse* (1991) 54 Cal.3d 723, 742.) "If there is a reasonable possibility that the defect in a complaint can be cured by amendment, it is an abuse of discretion to sustain a demurrer without leave to amend. [Citation omitted.] The burden is on the plaintiff, however, to demonstrate the manner in which the complaint might be amended." (*Ibid.*)

Appellant contends the trial court erred in sustaining the demurrer because he stated claims for trespass of his religious beliefs, violation of liberty of conscience, and mental suffering. We conclude the trial court properly sustained the demurrer without leave to amend.

First, to the extent appellant's amended complaint attempted to allege state constitutional and statutory claims, his action is barred for failing to comply with the government tort claims filing requirements. California's Tort Claims Act provides, subject to certain exceptions, that an action for money damages against a local public entity may not be maintained unless a written claim has first been timely presented to the entity and rejected in whole or in part. (Gov. Code, §§ 905, 945.4.) Compliance with the claims statutes is mandatory; failure to file a claim is fatal to the cause of action. (*City of San Jose v. Superior Court* (1974) 12 Cal.3d 447, 454.) Moreover, in order to state a cause of action, compliance with the claims statutes when applicable, or the existence of circumstances excusing compliance, must be alleged by the plaintiff. (*Chase v. State of California* (1977) 67 Cal.App.3d 808; Cal. Gov Tort Liability Practice (Cont.Ed.Bar 1992) §§ 6.7, 6.27, 6.128.)

A review of appellant's amended complaint reveals that each of the causes of action alleged seeks money damages (general and punitive) based on violations of the California

Constitution and the Civil Code. Appellant did not allege compliance with the claims statutes or show that he was excused from compliance. Contrary to his contentions, the fact that his causes of action are founded directly on our state Constitution does not excuse him from compliance with the claims statutes. (*City of San Jose v. Superior Court, supra,* 12 Cal.3d at p. 454; *Vinnicombe v. State of California* (1959) 172 Cal.App.2d 54, 57.) Appellant cites no authority on appeal demonstrating that the claims statutes were either inapplicable or that he was excused from compliance. Nor did he request leave to amend below to a state a cause of action not subject to the claims statute.1

Second, to the extent appellant's complaint can be construed to allege either state or federal constitutional claims, it is barred by the applicable statutes of limitations. He alleges that county officials refused to expunge his social security number from county records in accordance with his requests as early as 1994, and that the county's refusal to do so violated his state constitutional rights. The one year limitations period set forth in Code of Civil Procedure section 340, subdivision (3), applies to infringements of personal rights, such as the constitutional violation alleged here. [E.g., *Acuna v.*

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1 Appellant's complaint does not primarily seek injunctive or declaratory relief which might render compliance with the claims statute inapplicable. (See, e.g., *Loehr v. Ventura County Community College Dist.* (1983) 147 Cal.App.3d 1071, 1081 [nonpecuniary actions, such as those seeking injunctive or declaratory relief, when money is an incident to such an action, are not subject to the claims filing requirements; when the primary purpose of the action is pecuniary in nature, the action is subject to the claims filing requirements].)
Regents of University of California (1997) 56 Cal.App.4th 639, 646 [one-year limitation period applies to actions concerning rights to free speech, assembly, and civil rights].) Appellant's complaint was filed in 1998, nearly four years after the county first allegedly refused to comply with his request to remove his

social security number from its records. Consequently, his action is barred.

Appellant has cited no authority demonstarting that the alleged violation here is continuing in nature for purpose of statute of limitations. (*Herbert v. Reinstein* (E.D.Pa. 1997) 976 F.Supp. 331, 337 [statute of limitation barred action for civil rights violation under 42 U.S.C. § 1983; "courts are generally wary of extending the doctrine [of continuing violations] to save claims arising outside of the employment discrimination area"].)

Third, appellant's amended complaint also alleges that respondents' refusal to correct their records violated his statutory rights under Civil Code sections 1798.18 and 1798.45. These statutory sections provide no avenue of relief for appellant. As respondent's observe, the Information Practices Act (Civ. Code, §§ 1798 et esq.) does not apply to local governments. (Civ. Code, §§ 1798.3; Gov. Code, § 6252, subd. (b).)

Fourth, the third cause of action alleged by appellant, entitled "mental suffering," presents only an element for damages. It is not a substantive claim. (E.g., *Grieves v. Superior Court* (1948) 157 Cal.App.3d 159, 163-164.)

Finally, the trial court did not err in concluding that appellant failed as a matter of law to state a cause of action for violation of his religious freedoms. In *Bowen v. Roy, supra,* 476 U.S. 693 [90L.Ed.2d 735], the United States Supreme Court rejected a free exercise challenge to the statutory requirement that a social security number be supplied by applicants seeking certain welfare benefits. The court reasoned that the denial of a governmental benefit by a uniformly applicable statute did not constitute infringement of religious liberty or invidious discrimination. The court noted that the requirement did not burden the dissemination of religious views, affirmatively compel plaintiffs to refrain from religiously motivated conduct, or require plaintiffs to engage in conduct found objectionable for religious reasons. The court further reasoned that the social security requirement promoted a legitimate and important public interest in preventing welfare fraud. The court noted that "[t]he Free Exercise Clause simply cannot be understood to require the

Government to conduct its own internal affairs in ways that comport with the religious beliefs of particular citizens. Just as the Government may not insist that [plaintiffs] engage in any set form of religious observance, [the plaintiffs] may not demand that the Government join in their chosen religious practices by refraining from using a number to identify their daughter. '[T]he Free Exercise Clause is written in terms of what the government cannot do to the individual, not in what the individual can extract from the government.' [Citation omitted.]" (*Id.*, at pp. 699-700. [90 L.Ed.2d at p. 744].)

Appellant's amended complaint does not allege that respondents are compelling him to engage in conduct that violates his religious beliefs. He does not allege that he has suffered any adverse employment consequences as a result of his religious beliefs, that he has been denied employment benefits because of a refusal to supply a social security number, or that he is being compelled by respondents periodically to provide a social security number. The trial court did not err in sustaining the demurrer without leave to amend.

The judgment is affirmed.

NOT TO BE PUBLISHED.

COFFEE, J.

We concur:

GILBERT, Acting P.J.

YEGAN, J.

Barbara A. Lane, Judge
Superior Court County of Ventura

Patrick Dain, in pro per., for Plaintiff and Appellant.

Law Offices of Alan E. Wisotsky and Jeffrey Held for Defendants and Respondents.

APPENDIX A

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT

DIVISION 6

May 27, 1999

DAIN, PATRICK
Plaintiff-Appellant

v.
VENTURA,COUNTY OF
Defendant-Respondent

B125700
Ventura County No. 179954

THE COURT:

Petition for rehearing is denied.

cc: All Counsel
File

APPENDIX B

Second Appellate District, Division Six, No. B125700
S079570

IN THE SUPREME COURT OF CALIFORNIA

Patrick DAIN, Appellant

SUPREME COURT

FILED

v.

JUL 14 1999

Robert Wandruff Clerk
COUNTY OF VENTURA Et Al., Respondents

Deputy

Appellant's petition for review DENIED.

GEORGE

Chief Justice

APPENDIX C